there were in existence any next of kin or other person who could take by descent the amount recovered. *Held,* the petition was insufficient since there was no allegation that there were in existence beneficiaries entitled under the statute to recover. *Troll* v. *Laclede Gaslight Co.* (Mo.), 169 S. W. 337. See NOTES, p. 376.

DIVORCE—CUSTODY OF CHILDREN—MODIFICATION OF DECREE.—A husband was granted a divorce for the wife's adultery, and the custody of the two children of the marriage was granted to him. After two years the wife married a man in no way connected with her former offense and since that marriage had lived a blameless life. *Held,* the decree will be modified so as to authorize her to visit the children one afternoon in each third month. *Powers* v. *Powers* (App. Div.), 150 N. Y. Supp. 213.

On principle it seems as if the court ought to have power to modify, as the circumstances change, a decree as to the custody of the children, rendered on the divorce of the parents, even in the absence of statute so allowing or reservation in the original decree. See BISHOP, MARRIAGE, DIVORCE AND SEPARATION, 1187. But the contrary appears to have been the rule in New York, based on the ground that the decree was final and the court had no jurisdiction to alter or amend it. *Crimmins* v. *Crimmins,* 28 Hun (N. Y.) 200. But such power is now given in practically every state by statute. A statute giving power to the courts to modify a decree as to the custody of the children is not retroactive. *In re Haworth,* 59 App. Div. 393, 69 N. Y. Supp. 843. And a subsequent modification of the decree can only be made for reasons occurring after the final decree. *Dubois* v. *Dubois,* 96 Ind. 6; *Chandler* v. *Chandler,* 24 Mich. 176. Where the child is in the custody of a stranger it has been held that the mere change of condition of the mother and the proof that she is now a proper person to care for the child will warrant the court to notify a decree so as to give her the custody of the child. *Curtis* v. *Curtis,* 46 Wash. 664, 91 Pac. 188. But as between the parents it is well settled that the welfare of the child is the chief consideration in the modification of such a decree. *Brown* v. *Brown,* 71 Kan. 868, 81 Pac. 199; *Hewitt* v. *Long,* 76 Ill. 399; *Perry* v. *Perry,* 17 Misc. Rep. 28, 39 N. Y. Supp. 863. It has frequently been held that the mere visits of a mother to her child at long intervals after she has reformed is in no way detrimental to the welfare of the child and the reformation on the part of the mother ought to be rewarded by an occasional visit. *Perry* v. *Perry, supra; Breedlove* v. *Breedlove,* 27 Ind. App. 560, 61 N. E. 797; *Powers* v. *Powers, supra.* For the court should not disregard the maternal instinct. *Haley* v. *Haley,* 44 Ark. 429. But where the mother has not reformed and is still leading an adulterous life a decree will not be modified so as to allow her to visit her child. *Woodhouse* v. *Woodhouse,* 89 App. Div. 88, 85 N. Y. Supp. 442.

FEDERAL COURTS—JURISDICTION—REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.—In a suit between citizens of New York, South Carolina, Del-

aware and West Virginia, plaintiffs, and citizens of Maryland and Washington, defendants; one of the defendants, a resident of the forum, attempted to remove the suit to the Federal court, on the ground that it was a separable controversy within the meaning of § 28 of the Judicial Code. *Held*, the case will be remanded to the State court. *Whitaker* v. *Coudon*, 217 Fed. 139.

In a controversy, wholly between citizens of different States, where none of the defendants reside in the forum, if the action is brought in a State court the defendants may remove the cause to the United States district court. *Munford Rubber Tire Co.* v. *Consolidated Rubber Tire Co.*, 130 Fed. 496; Act Mar. 3, 1911, c. 231, 36 Stat. 1094, U. S. Comp. Stat. (Supp. 1911) 140. In this case the statute expressly provides that all the defendants must be non-residents; and a like provision is found in a later clause in the same section, where provision is made for removal of causes on the ground of local prejudice or influence. Another clause in this same section provides that in any suit where there is a separable controversy between citizens of different States, any defendant, a party to such separable controversy, may remove the cause; but the statute is silent on the question whether in this instance the defendant removing must be a non-resident of the forum. The weight of authority, viewing these clauses as independent provisions, takes the view that a defendant removing under the separable controversy clause may be a resident of the forum; based on the ground that the express restriction found in the other two clauses of the section does not appear in this clause. *Stanbrough* v. *Cook*, 38 Fed. 369, 3 L. R. A. 400; *National Bank* v. *Howard*, 54 Misc. 82, 103 N. Y. Supp. 814. On principle the opposite conclusion would seem preferable. The clause in question is a further extension of the diverse citizenship cases, and the intention of Congress seems to have been to confine the right of removal in all these cases to the non-resident defendant. No reason, aside from a literal construction of the statute, can be adduced for a distinction in these cases. See *Thurber* v. *Miller*, 67 Fed. 371.

INSURANCE—FIRE INSURANCE—HOSTILE AND FRIENDLY FIRES.—The plaintiff operated a laundry which was insured by the defendant. Due to a failure to keep sufficient water in the boiler, damage thereto resulted from the heat of the fire in the furnace. *Held*, the defendant is not liable. *McGraw* v. *Home Ins. Co. of New York* (Kan.), 144 Pac. 821.

The principal case involves the distinction between hostile and friendly fires. A fire is friendly when it burns in the place intended for it to burn though damage results from its negligent maintenance. It is a hostile fire when it burns outside of the place intended for it to burn, either in its inception or afterwards. To constitute loss by fire within the meaning of a fire insurance policy the damage must result from a hostile fire. *American Towing Co.* v. *German Fire Ins. Co.*, 74 Md. 25, 21 Atl. 553; *Fitzgerald* v. *German-American Ins. Co.*, 30 Misc. Rep. 72, 62 N. Y. Supp. 824. But though the fire was friendly, where it was excessive for the purpose for which it was intended the opposite conclusion has been reached. *O'Connor* v. *Queen Ins. Co. of America*, 140 Wis. 388, 122 N. W. 1038. Fire in a chimney caused by soot burning is a